

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

BEFORE THE INDIANA  
COMMISSIONER OF INSURANCE

IN THE MATTER OF:

WARRANT NUMBER: IDOI-MC07- 0627-041

Midwest Insurance Group, Inc. )  
a Risk Retention Group )  
14362 N. Frank Lloyd Wright Blvd. )  
Suite 1000 )  
Scottsdale, Arizona 85260 )

NAIC ID: 11999 )

Market Conduct Examination )

**FILED**

**JAN 27 2010**

**STATE OF INDIANA  
DEPT. OF INSURANCE**

### SECOND AMENDED FINAL ORDER

This Second Amended Final Order is filed pursuant to Ind. Code § 27-1-3.1-12 and results from the State of Indiana Insurance Commissioner's (hereinafter referred to as "Commissioner") consideration and review of the examination report and all written submissions and rebuttals regarding the market conduct examination of Midwest Insurance Group, Incorporated, a Risk Retention Group ("Midwest"), a foreign risk retention group authorized to conduct business in the State of Indiana during all relevant times herein.

### RECITALS

1. The Indiana Department of Insurance (the "Department") conducted a market conduct examination of Midwest that resulted in a report.
2. A Final Order adopting the report was issued on June 2, 2009.
3. On July 6, 2009, Commissioner Carol Cutter issued an Amended Final Order on the market conduct examination report (the "Report"), conducted under Warrant Number IDOI-MC07-0627-041, of Midwest and its Patient's Compensation Fund surcharge contributions of all policies written between September 1, 2004, and September 30, 2006 (attached as "Exhibit A" and incorporated herein with six (6) subparts marked as Exhibits 2 - 7).

4. On August 5, 2009 the Indiana Department of Insurance (the "Department") and Midwest (the "Parties") entered into an Agreement To Resolve Market Conduct Examination setting forth the preliminary terms of the Parties' agreement to resolve the market conduct examination (the "Preliminary Agreement" attached as "Exhibit B" and incorporated herein).

5. On August 7, 2009, Midwest filed a Verified Petition for Judicial Review in the Superior Court of Marion County, (Cause No: 49D10-0908-MI-36573), of the Department's Amended Final Order of July 6, 2009.

6. The Parties have now modified and finalized the terms of the Preliminary Agreement on the market conduct examination in a manner acceptable to the Commissioner.

7. Paragraph four (4) of the Preliminary Agreement is modified so that Midwest will remit to the Department for the Patient's Compensation Fund ("PCF") the sum of Four Hundred Fifty Thousand Dollars (\$450,000.00), subject to the following deadlines:

- a. Midwest will remit Two Hundred Thousand Dollars (\$200,000.00) no later than thirty (30) days following the date of this Second Amended Final Order.
- b. Midwest will remit a second Two Hundred Thousand Dollars (\$200,000.00) no later than one year following the date of this Second Amended Final Order.
- c. Midwest will remit a final Fifty Thousand Dollars (\$50,000.00) no later than two years following the date of this Second Amended Final Order.

8. In addition to the payments listed in number seven (7) above, Midwest will provide added financial protection to the PCF in the amount of Two Million Dollars (\$2,000,000.00) through an endorsement of Midwest's existing reinsurance agreement as underwritten by Lloyd's of London to pay on all open claims against Midwest insureds covered under the policies of insurance written or renewed by Midwest during the examination period of

September 1, 2004 through September 30, 2006 (the "Reinsurance Agreement" attached hereto as "Exhibit C" and incorporated by reference herein).

9. After the initial execution of the Reinsurance Agreement, Midwest will renew the Reinsurance Agreement with Lloyd's of London every thirty six (36) months while open claims remain in the PCF for a total duration of one hundred eight (108) months. However, Midwest is under no duty to renew the Reinsurance Agreement if all claims subject to the Reinsurance Agreement are paid or closed at any time during the one hundred eight (108) month period.

10. Paragraph seven (7) of the Preliminary Agreement is modified and supplemented according to the Parties' agreement such that the open claims referenced in paragraphs eight (8) and nine (9) above of this Second Amended Final Order number thirty nine (39) total and are identified on the Midwest Insurance Group Open Claims list (attached hereto as "Exhibit D" and incorporated herein).

11. Paragraph eight (8) of the Preliminary Agreement is amended and modified such that the definition of Qualifying Claims subject to the Reinsurance Agreement includes only those claims which are identified on the Midwest Insurance Group Open Claims list.

12. Paragraph eight (8) of the Preliminary Agreement is further amended and modified so that Midwest agrees to fully reimburse the PCF for any payments made by the PCF for excess damages for claims which have been "Incurred But Not Reported". For the purposes of the Second Amended Final Order, "Incurred But Not Reported" means the following:

- a. A claim for Medical Malpractice is filed with the Department or in State Court after the date in which the Second Amended Final Order is executed by the Commissioner;
- b. The claim is covered under a Midwest policy of insurance;

- c. The claim is qualified for payment from the PCF; and
- d. The acts or omissions of the health care provider which constitute the allegations of medical malpractice occurred during the Examination Period as defined in the Warrant.

13. Paragraph nine (9) of the Preliminary Agreement is modified such that the additional protection provided by the Reinsurance Agreement will not be triggered unless and/or until the Department pays qualifying claims from the Midwest Insurance Group Open Claims list on behalf of Midwest's insured, including Loss Adjustment Expense ("LAE"), in an amount which exhausts the remaining balance of the total surcharge originally remitted to the Department by Midwest during the examination period and also exhausts the additional Four Hundred fifty Thousand Dollars (\$450,000.00) that is to be paid to the PCF by Midwest.

14. Paragraph nine (9) of the Preliminary Agreement is additionally modified and supplemented to reflect the Parties compromise and agreement that the amount of surcharge remitted to the Department by Midwest during the examination period for the purposes of this settlement, totaled One Million Eight Hundred Thirty Nine Thousand Dollars (\$1, 839,000.00).

15. The Parties agree that the Department has already paid One Million One Hundred Thirty Nine Thousand Four Hundred Seventy Nine Dollars (\$1,139,479.00), on claims written or renewed by Midwest during the examination period and listed on the Midwest Insurance Group Open Claims list as claim # 1006052 and claim # 1008362.

16. The Parties agree that since One Million Eight Hundred Thirty Nine Thousand Dollars (\$1,839,000.00) surcharge has been paid to the Department by Midwest and One Million One Hundred Thirty Nine Thousand Four Hundred Seventy Nine Dollars (\$1,139,479.00) of that amount has been paid on claims by the Department, a balance of Six Hundred Ninety Nine

Thousand Five Hundred Twenty One Dollars (\$699,521.00) remains from the total amount of surcharge paid by Midwest during the market conduct examination period.

17. Based upon the agreements made by the Parties in paragraphs eight (8) through fourteen (14) above, paragraph nine (9) of the Preliminary Agreement is further modified and supplemented such that the total amount that must be paid by the PCF on behalf of Midwest's insureds on the claims identified on Midwest Insurance Group Open Claims prior to the triggering of the additional protection provided by the Reinsurance Agreement totals One Million One Hundred Forty Nine Thousand Five Hundred and Twenty One Dollars (\$1,149,521.00). Said sum is the additional amount to be remitted to the PCF by Midwest and identified in paragraph seven (7) above and the balance remaining of the surcharge that has been paid to the Department by Midwest and identified in paragraph sixteen (16) above.

18. Midwest will supply to the Department at its request and as often as deemed appropriate by the Department, copies of renewal contracts with Lloyd's of London on the Reinsurance Agreement, copies of claims paid records for those claims listed on the Midwest Insurance Group Open Claims list referenced in paragraph number eight above, copies of financial documents that have a bearing on Midwest's ability to pay the Four Hundred Fifty Thousand Dollars (\$450,000.00) referenced in paragraph seven (7) above, and any all documents necessary for the Department to verify complete compliance with the terms of this Second Amended Final Order.

19. Midwest voluntarily agrees to waive its right to judicial review of this Second Amended Final Order.

20. Midwest agrees that upon execution of this Second Amended Final Order, Midwest

will immediately Move to Dismiss with Prejudice its Verified Petition for Judicial Review previously filed in the Superior Court of Marion County on this matter.

21. The Parties confirm that the Preliminary Agreement including all modifications and supplementations agreed to by the Parties in this Second Amended Final Order, the Amended Final Order and this Second Amended Final Order have been submitted for approval to the Arizona Department of Insurance (the "ADOI"), which has authority to review and approve the agreements made within as the domestic regulator of Midwest. The Parties agree that the duties and obligations of the Parties created through this Second Amended Final Order and through the terms of the Preliminary Agreement as modified and supplemented under this Second Amended Final Order are not triggered and shall have no force or effect until thirty (30) days after written confirmation of approval of said duties, obligations and terms is received by the Parties from the ADOI. In the unlikely event that ADOI disapproves, the Parties agree that this Second Amended Final Order is void and shall have no force or effect.

IT IS THEREFORE ORDERED by the Commissioner of Insurance:

1. The Report of the examiner, along with the February 19, 2009 written Rebuttal of Midwest shall be and are hereby adopted as filed and incorporated herein.

2. This Second Amended Final Order is subject to judicial review pursuant to Ind. Code § 4-21.5-5 et seq., and Midwest voluntarily and freely waives its right to judicial review of this Second Amended Final Order.

3. Upon execution of this Second Amended Final Order, Midwest will immediately Move to Dismiss with Prejudice its Verified Petition for Judicial Review previously filed in the Superior Court of Marion County on this matter.

4. Failure to comply with the terms of this Second Amended Final Order will result in

emergency suspension of Midwest's license. Nothing in this Second Amended Final Order shall be construed to grant Midwest permission to fail to comply with any legal requirement in the conduct of the business of insurance in this state. The Department does not waive any of its regulatory rights.

5. Midwest will continue to handle and defend all pending claims within its primary layer of insurance.

6. Midwest will remit to the Department for the PCF the sum of Four Hundred Fifty Thousand Dollars (\$450,000.00).

- a. Midwest will remit Two Hundred Thousand Dollars (\$200,000.00) no later than thirty (30) days following the date of this Second Amended Final Order.
- b. An additional Two Hundred Thousand Dollars (\$200,000.00) is due no later than one year following the date of this Second Amended Final Order.
- c. A final Fifty Thousand Dollars (\$50,000.00) is due no later than two years following the date of this Second Amended Final Order.

7. In addition to the payments listed in number 6 above, Midwest will provide Two Million Dollars (\$2,000,000.00) in additional financial protection to the PCF through an endorsement to Midwest's existing Lloyd's of London reinsurance contract to pay on all open claims against Midwest insureds covered under the policies of insurance written or renewed during the examination period of September 1, 2004 through September 30, 2006 and specifically identified on the Midwest Insurance Group Open Claims list, attached hereto as "Exhibit D"..

8. After the initial execution of the reinsurance contract Midwest will renew the

reinsurance contract with Lloyd's of London every thirty six (36) months while open claims remain in the PCF for a total duration of one hundred eight (108) months. However, Midwest is under no duty to renew the Reinsurance Agreement if all claims subject to the Reinsurance Agreement are closed at any time during the one hundred eight (108) month period.

9. The additional financial protection provided by the Reinsurance Agreement will not be triggered unless and/or until the Department exhausts the remaining balance of the total surcharge originally remitted to the Department by Midwest during the examination period agreed by the parties to be Six Hundred Ninety Nine Thousand Five Hundred Twenty One Dollars (\$699,521.00) and also exhausts the additional Four Hundred Fifty Thousand Dollars (\$450,000.00) that is to be paid to the PCF pursuant to this Second Amended Final Order as PCF payments on behalf of those claims specifically identified on the Midwest Insurance Group Open Claims list and attached hereto as Exhibit D.

10. Pursuant to Ind. Code § 27-1-3.1-11, failure to comply with the terms of this Second Amended Final Order may subject Midwest to further legal and/or administrative action which could include revocation of its authority to conduct business in the State of Indiana.

11. Pursuant to Ind. Code § 27-1-3.1-12, within thirty (30) days of the issuance of the adopted report through this Second Amended Final Order, Midwest shall file an affidavit with the Department stating that each director has received a copy of the adopted report and related orders.

ALL OF WHICH IS ORDERED THIS 27<sup>th</sup> DAY OF January, 2010.

  
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Doug Webber, Acting Commissioner of Insurance



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